



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to
Implement the Commission's
Procurement Incentive Framework and to
Examine the Integration of Greenhouse
Gas Emissions Standards into
Procurement Policies.

R.06-04-009

**REPLY COMMENTS OF
CONSTELLATION NEWENERGY, INC., CONSTELLATION ENERGY
COMMODITIES GROUP, INC. AND CONSTELLATION GENERATION GROUP,
LLC ON
DRAFT WORKSHOP REPORT:
INTERIM EMISSION PERFORMANCE STANDARD PROGRAM FRAMEWORK,
R.06-04-009, JUNE 21-23, 2006
PREPARED BY COMMISSION STAFF AUGUST 21, 2006**

September 18, 2006

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I. Introduction and Summary

On August 21, 2006, Staff of the California Public Utilities Commission (“Commission”) issued the *Draft Workshop Report: Interim Emission Performance Standard Program Framework* (“Workshop Report”). The Workshop Report included revisions to the Staff Proposal that had been discussed throughout the workshops (“Revised Staff Proposal”). In these reply comments, Constellation NewEnergy, Inc, Constellation Energy Commodities Group, Inc., and Constellation Generation Group, LLC (collectively, “Constellation”) addresses the single issue of a proposed exemption for Research and Development (R&D) projects.

II. Any Research and Development Exemption To The Gateway Emission Performance Standard Needs More Clarity and May Be Inappropriate.

Constellation does not support an exemption to the EPS standard for R&D projects proposed in the Revised Staff Proposal and supported by the IOUs and PacifiCorp. Put very frankly, Constellation is concerned that without a great deal more clarity about how such an exemption would be granted, the potential for this exemption to create a EPS compliance loophole, to the competitive disadvantage of other compliant generating resources or independent research efforts, is significant. For example, if a project is granted an exemption because the R&D expectation shows initial promise that does not ultimately materialize, will the exemption be rescinded so as to avoid backsliding?¹

While Constellation understands the desirability of supporting technological advancement that can help achieve low GHG emission electric generation resources, any such efforts should be carefully crafted in light of all GHG-related policies to avoid the problem of conflicting incentives. There are a number of GHG-related efforts that will be underway in the near term, including regulatory processes associated with AB 32. It seems more appropriate to exclude an R&D exemption from the EPS at this time until the larger GHG regulatory framework can be better understood. For example, a viable emission reduction trading and offsets program from which the R&D projects can secure the compliance credits necessary to achieve EPS compliance in light of the success of any GHG emission reductions provides a potential way to avoid GHG emission backsliding, and a means for the real costs of the project to be better managed and understood.

¹ The loophole potential is potentially exacerbated by provisions in SB 1368 that provide enhanced rates of return for low-emitting resources.

In short, Constellation suggests that establishing an R&D exemption is ill-advised at this point in time, and requests that if the Commission pursues the implementation of such exemptions further, it provide an opportunity for the details of when, how, and pursuant to what criteria such exemptions would be granted, to be developed and fully vetted.

III. Conclusion

Constellation appreciates the extensive work undertaken by Staff to develop the workshop report and the straw proposal. However, with respect to the potential for a R&D exemption to the EPS, Constellation does not believe that creation of such a loophole is appropriate at this time. More time is needed to understand the full range of regulatory efforts underway with regard to GHG emission reductions to avoid potentially conflicting regulatory incentives. Moreover, if and when an R&D exemption is contemplated, other steps should be in place to assure that any project that is not successful will not lead to backsliding on emissions.

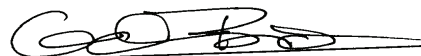
Respectfully submitted,

September 18, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of *Reply Comments Of Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc. And Constellation Generation Group, LLC On Draft Workshop Report: Interim Emission Performance Standard Program Framework, R.06-04-009, June 21-23, 2006 Prepared By Commission Staff August 21, 2006* on all known parties to R.06-04-009 by transmitting an e-mail message with the document attached to each party named in the official service list as required in the Rulemaking. Those parties without email addresses or from which I received a delivery failed message were served by first-class mail with postage prepaid.

Executed on September 18, 2005 at Sacramento, California.

/s/

Eric Janssen

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September 18, 2006

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